

**REMARKS**

*Election/Restrictions*

Claims 27-32 are provisionally withdrawn from further consideration in this application, but they will be examined upon the allowance of a generic claim.

Independent claims 17 and 19 have been canceled in favor of the **new claims 33 and 34**, respectively, and all of the claims 18, 20-26, 33 and 34 are generic and are readable on the elected species of Figs. 1-3.

Since at least one generic claim now should be allowable, it is requested that the Examiner also now examine in the present application the provisionally withdrawn claims 27-32.

*Claim Rejections- 35 U.S.C. § 112*

The new independent claims 33 and 34 have been written to overcome the rejection of their corresponding claims 17 and 19 under 35 U.S.C. § 112, second paragraph. The dependent claims 20-26 have been amended to overcome the Examiner's stated grounds in support of the rejections of these claims.

As for the Examiner's comments directed to **canceled** claim 19, this claim is now replaced by new claim 34 which clearly is an **apparatus** ("device") claim.

Any possibly method limitations are contained only in the preamble of claim 34, and only apparatus (structure) is recited in the characterizing clause.

In the *Lyell* case cited by the Examiner, the involved claim expressly claimed both an apparatus and a method in the same claim ("[A]...tool... and method for using the same comprising:").

Therefore, applicant respectfully requests Examiner Shabman to reconsider and withdraw the rejection under 35 U.S.C. § 112, second paragraph.

*Claim Rejections - 35 U.S.C. § 103*

Applicant respectfully traverses the rejections under 35 U.S.C. § 103(a) based on unpatentability (obviousness) over Fraim '751 and Hass '972, insofar as these rejections may be applied to the new independent claims 33 and 34 and their respective dependent claims.

The new independent claims 33 and 34 are directed to the first exemplary embodiment, namely the “transverse webs” 26 which are arranged in the “covering hood” 19, and which are employed to close off the joints formed between the “plates of the plate conveyor”.

The advantage of this solution is that this prevents air from being sucked in through the joints between the plates of the plate conveyor and counteracting the negative pressure in the covering hood. Applicant is unable to discern any suggestion of such a solution in the cited prior art. One obvious solution to the above problem would be to construct the conveyor to form a joint-free top side to keep any air from flowing into the interior of the covering hood. However, the claimed invention takes a different approach.

US 6,167,751 to Fraim et. al. relates only broadly to a tightness test of containers. A “plate conveyor” is not even disclosed, let alone any webs in a covering hood for covering the joints between the plates of a plate conveyor.

US 3,751,972 to Hass also relates only broadly to the problem of making tightness checks of containers. Yet the containers here are placed on a closed supporting surface having the form of a tray so that any joints or other kinds of openings in the conveyor are of no consequence. The problem on which the claimed invention is based is therefore not even addressed in Hass.

The Examiner does not present any reasoning or rationale for his conclusions that the subject matter of each of independent claims 17 and 19 (corresponding to **new claims 33 and 34, respectively**), would have been obvious from Fraim (or Hass); however, in view of the above-described deficiencies in the disclosures of these two cited references, Applicant respectfully submits that this prior art not only does not recognize the problem solved by Applicant’s claimed

invention, but also does not teach or even suggest Applicant's claimed solution as recited in the new independent claims 33 and 34.

Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the rejections under 35 U.S.C. § 103(a).

In summary, then, and for the reasons presented above, Applicant respectfully requests the Examiner to reconsider and withdraw the rejections under 35 U.S.C. § 112 second paragraph, and 35 U.S.C. § 103(a), and now to **allow claims 18, 20-26, 33 and 34**. Also, since a generic claim now should be allowable, Applicant also respectfully requests the Examiner now to examine the provisionally withdrawn claims 27-32.

Applicant files concurrently herewith a Petition (with fee) for Extension of Time of two months.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

/John H. Mion/  
John H. Mion  
Registration No. 18,879

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: August 18, 2009